

AMENDED IN ASSEMBLY SEPTEMBER 9, 2003

AMENDED IN ASSEMBLY SEPTEMBER 5, 2003

AMENDED IN SENATE JUNE 2, 2003

SENATE BILL

No. 317

Introduced by Senator Kuehl

(Principal coauthors: Senators Ducheny and Machado)

(Principal coauthor: Assembly Member Kehoe)

~~**(Coauthor: Senator Alpert)**~~

~~(Coauthor: Assembly Member Vargas)~~

(Coauthors: Senators Alpert and Escutia)

(Coauthors: Assembly Members Berg, Canciamilla, Corbett, Shirley Horton, Lowenthal, Plescia, Spitzer, Vargas, Wolk, and Wyland)

February 19, 2003

An act to amend Section 2081.7 of the Fish and Game Code and to amend Section 1013 of, and to add Section 1013.5 to, the Water Code, relating to the resources, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 317, as amended, Kuehl. Resources.

(1) Existing law authorizes the Department of Fish and Game, contingent upon, among other things, a determination by the Department of Fish and Game and the execution of a specified Quantification Settlement Agreement on or before December 31, 2003, to authorize the take of species resulting from certain environmental impacts attributable to the implementation of the agreement.

This bill, for the purposes of that provision, would require that agreement be executed on or before October 12, 2003, and would revise that contingency relating to a determination by that department.

(2) Existing law requires the Secretary of the Resources Agency to use all available authority to enter into a memorandum of understanding, with certain components, for the purposes of developing, selecting, and implementing alternatives for projects that realize specified objectives of the Salton Sea Reclamation Act. Existing law requires the secretary, with respect to this memorandum, to establish an advisory committee and specifies the composition of that committee.

This bill would require the secretary to undertake a study relating to the restoration of the Salton Sea ecosystem and the protection of wildlife dependent on that ecosystem. The bill would require the secretary to use all available authority to enter into a memorandum of understanding with the Secretary of the Interior to obtain federal participation in the restoration of the Salton Sea. The bill would revise the composition of that advisory committee.

(3) Existing law requires that, for the purposes of evaluating the use of water by the Imperial Irrigation District during the term of the Quantification Settlement Agreement and for 6 years thereafter, it shall be conclusively presumed that any water conserved or used for mitigation purposes through land following conservation measures has been conserved in the same amount as if conserved by efficiency improvements.

Existing law prohibits the forfeiture or impairment of a right to use water that is conserved in a described manner to carry out a transfer pursuant to the Quantification Settlement Agreement or to mitigate environmental impacts of that transfer. Existing law provides that during the period that the Quantification Settlement Agreement is in effect and the Imperial Irrigation District is meeting its water delivery obligations under that agreement, if the Imperial Irrigation District uses land following conservation measures that ensure compliance with certain criteria, no person may seek to obtain additional conserved Colorado River water from the district until the district has adopted a resolution offering to make conserved Colorado River water available.

Existing law makes the operation of these provisions subject to the execution of the Quantification Settlement Agreement on or before December 31, 2002.

This bill would make the operation of these provisions, *as modified*, subject to the execution of that agreement on or before October 12, 2003. The bill would provide that during the period in which the Quantification Settlement Agreement is in effect and the ~~District~~



Imperial Irrigation *District* is meeting its water delivery obligations under that agreement and certain other water delivery obligations, no person may seek to obtain additional conserved Colorado River water from the district until the district has adopted a resolution offering to make conserved Colorado River water available. The bill, with certain exceptions *and subject to the execution of that agreement on or before October 12, 2003*, would subject any water transferred by the district to an ecosystem restoration fee during the initial term in which that agreement is in effect. ~~The bill would authorize the Coachella Valley Water District, Imperial Irrigation District, and Metropolitan Water District of Southern California to enter into certain agreements relating to Colorado River water.~~

(4) Existing law establishes the Fish and Game Preservation Fund, a fund that is continuously appropriated to the department to carry out the Fish and Game Code.

By imposing new duties on the department, this bill would make an appropriation.

(5) This bill would become operative only if SB 277 and SB 654 are both chaptered and become effective on or before January 1, 2004.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2081.7 of the Fish and Game Code is
2 amended to read:
3 2081.7. (a) Notwithstanding Sections 3511, 4700, 5050, and
4 5515, and contingent upon the fulfillment of the conditions listed
5 in subdivisions (b), (c), and (d), the department may authorize,
6 under Chapter 1.5 (commencing with Section 2050) or Chapter 10
7 (commencing with Section 2800), the take of species resulting
8 from impacts attributable to the implementation of the
9 Quantification Settlement Agreement, as defined in subdivision
10 (a) of Section 1 of the act that added this section during the
11 2001–02 Regular Session, on all of the following:
12 (1) The salinity, elevation, shoreline habitat, or water quality of
13 the Salton Sea.
14 (2) The quantity and quality of water flowing in the
15 All-American Canal, the Coachella Canal, the Imperial Valley and
16 Coachella Valley drains, the New and Alamo Rivers, the Coachella

1 Valley Stormwater Channel, and the habitat sustained by those
2 flows.

3 (3) Agricultural lands in the Imperial Valley.

4 (4) The quantity and quality of water flowing in the Colorado
5 River, the habitat sustained by those flows, and the collection of
6 that water for delivery to authorized users.

7 (b) The Quantification Settlement Agreement is executed by
8 the appropriate parties on or before October 12, 2003.

9 (c) The department has determined that the appropriate
10 agreements have been executed to address environmental impacts
11 at the Salton Sea that include enforceable commitments requiring
12 all of the following:

13 (1) Imperial Irrigation District to transfer 800,000 acre feet of
14 conserved water, by conservation methods selected by the
15 Imperial Irrigation District, to the Department of Water Resources
16 on a mutually agreed upon schedule in exchange for payment of
17 one hundred seventy-five dollars (\$175) per acre-foot. The price
18 shall be adjusted for inflation on an annual basis.

19 (2) Imperial Irrigation District to transfer up to 800,000
20 additional acre-feet of conserved water, by conservation methods
21 selected by the Imperial Irrigation District, to the Department of
22 Water Resources during the first 15 years of the Quantification
23 Settlement Agreement on the schedule established for the
24 mitigation water that was previously to be transferred to the San
25 Diego Water Authority, or on a mutually agreed upon schedule, at
26 no cost for the water in addition to the payment for the water from
27 the mitigation fund described in paragraph (1) of subdivision (b)
28 of Section 3 of Senate Bill 654 of the 2003–04 Regular Session.

29 (3) As a condition to acquisition of the water described in
30 paragraph (1), the Department of Water Resources shall be
31 responsible for any environmental impacts, including Salton Sea
32 salinity, related to use or transfer of that water. As a condition to
33 acquisition of the water described in paragraph (2), the
34 Department of Water Resources shall be responsible for
35 environmental impacts related to Salton Sea salinity that are
36 related to the use or transfer of that water.

37 (4) The Metropolitan Water District of Southern California
38 (MWD) to purchase up to 1.6 million acre-feet of the water
39 provided in accordance with paragraphs (1) and (2) from the
40 Department of Water Resources at a price of not less than two

1 hundred fifty dollars (\$250) per acre-foot on a mutually agreed
2 upon schedule. The price shall be adjusted for inflation on an
3 annual basis. The Department of Water Resources shall deposit all
4 proceeds from the sale of water pursuant to this paragraph, after
5 deducting costs and reasonable administrative expenses, into the
6 Salton Sea Restoration Fund.

7 (5) The Metropolitan Water District of Southern California to
8 pay not less than twenty dollars (\$20) per acre-foot for all special
9 surplus water received by MWD as a result of reinstatement of
10 access to that water under the Interim Surplus Guidelines by the
11 United States Department of Interior subtracting any water
12 delivered to Arizona as a result of a shortage. The money shall be
13 paid into the Salton Sea Restoration Fund. The price shall be
14 adjusted for inflation on an annual basis. Metropolitan Water
15 District of Southern California shall receive a credit against future
16 mitigation obligations under the Lower Colorado River
17 Multi-Species Conservation Plan for any funds provided under
18 this paragraph to the extent that those funds are spent on projects
19 that contribute to the conservation or mitigation for species
20 identified in the Lower Colorado River Multi-Species
21 Conservation Plan and that are consistent with the preferred
22 alternative for Salton Sea restoration.

23 (6) Coachella Valley Water District, Imperial Irrigation
24 District, and San Diego County Water Authority to pay a total of
25 thirty million dollars (\$30,000,000) to the Salton Sea Restoration
26 Fund as provided in paragraph (2) of subdivision (b) of Section 3
27 of Senate Bill 654 of the 2003-04 Regular Session.

28 (d) All of the following conditions are met:

29 (1) The requirements of subdivision (b) and (c) of Section 2081
30 are satisfied as to the species for which take is authorized.

31 (2) The take authorization provides for the development and
32 implementation, in cooperation with federal and state agencies, of
33 an adaptive management process for monitoring the effectiveness
34 of, and adjusting as necessary, the measures to minimize and fully
35 mitigate the impacts of the authorized take. The adjusted measures
36 are subject to Section 2052.1.

37 (3) The take authorization provides for the development and
38 implementation in cooperation with state and federal agencies of
39 an adaptive management process that substantially contributes to
40 the long-term conservation of the species for which take is

1 authorized. Preparation of the adaptive management program and
2 implementation of the program is the responsibility of the
3 department. The department's obligation to prepare and
4 implement the adaptive management program is conditioned upon
5 the availability of funds pursuant to the Water Security, Clean
6 Drinking Water, Coastal and Beach Protection Act of 2002, if it is
7 approved by the voters at the statewide general election to be held
8 November 5, 2002 (Proposition 50), or other funds that may be
9 appropriated by the Legislature or approved by the voters for that
10 purpose. The failure to appropriate funds does not relieve the
11 applicant of the obligations of paragraphs (1) and (2). However,
12 the applicant shall not be required to fund any program pursuant
13 to this paragraph.

14 (4) The requirements of paragraph (1) may be satisfied if the
15 take is authorized under Chapter 10 (commencing with Section
16 2800).

17 (e) (1) The Secretary of the Resources Agency, in consultation
18 with the department, the Department of Water Resources, the
19 Salton Sea Authority, appropriate air quality districts, and the
20 Salton Sea Advisory Committee, shall undertake a restoration
21 study to determine a preferred alternative for the restoration of the
22 Salton Sea ecosystem and the protection of wildlife dependent on
23 that ecosystem. The restoration study shall be conducted pursuant
24 to a process with deadlines for release of the report and
25 programmatic environmental documents established by the
26 secretary, in consultation with the department, the Department of
27 Water Resources, the Salton Sea Authority, and the Salton Sea
28 Advisory Committee. The secretary shall use all available
29 authority to enter into a memorandum of understanding (MOU)
30 with the Secretary of the Interior, as provided in Section
31 101(b)(1)(B)(i) of the Salton Sea Reclamation Act of 1998 (P.L.
32 105-372) for the purpose of obtaining federal participation in the
33 restoration of the Salton Sea.

34 (2) The restoration study shall establish all of the following:

35 (A) An evaluation of and suggested criteria for the selection of
36 alternatives that will allow for consideration of a range of
37 alternatives including, but not limited to, an alternative designed
38 to sustain avian biodiversity at the Salton Sea, but not maintain
39 elevation for the whole sea, an alternative to maintain salinity at
40 or below current conditions and elevation near 230 feet below



1 mean sea level under a variety of inflow conditions, and a most
2 cost-effective technical alternative.

3 (B) An evaluation of the magnitude and practicability of costs
4 of construction, operation, and maintenance of each alternative
5 evaluated.

6 (C) A recommended plan for the use or transfer of water
7 provided by paragraph (2) of subdivision (c). No water may be
8 transferred pursuant to that subdivision unless the secretary finds
9 that transfer is consistent with the preferred alternative for Salton
10 Sea restoration.

11 (D) The selection of a preferred alternative consistent with
12 Section 2931, including a proposed funding plan to implement the
13 preferred alternative.

14 (3) The study identifying the preferred alternative shall be
15 submitted to the Legislature on or before December 31, 2006.

16 (4) The Secretary of the Resources Agency shall establish an
17 advisory committee for purposes of this subdivision as follows:

18 (A) The advisory committee shall be selected to provide
19 balanced representation of the following interests:

20 (i) Agriculture.

21 (ii) Local governments.

22 (iii) Conservation groups.

23 (iv) Tribal ~~interests~~ *governments*.

24 (v) Recreational users.

25 (vi) Water agencies.

26 (vii) *Air pollution control districts*.

27 (B) Appropriate federal agency representatives may be asked
28 to serve in an ex officio capacity.

29 (C) The Resources Agency shall consult with the advisory
30 committee throughout all stages of the alternative selection
31 process.

32 (f) This section shall not be construed to exempt from any other
33 provision of law the Quantification Settlement Agreement and the
34 Agreement for Transfer of Conserved Water by and between the
35 Imperial Irrigation District and the San Diego County Water
36 Authority, dated April 29, 1998.

37 SEC. 2. Section 1013 of the Water Code is amended to read:

38 1013. (a) The Imperial Irrigation District, acting under a
39 contract with the United States for diversion and use of Colorado
40 River water or pursuant to the Constitution or to this chapter, or

1 complying with an order of the Secretary of the Interior, a court,
2 or the board, to reduce through conservation measures, the volume
3 of the flow of water directly or indirectly into the Salton Sea, shall
4 not be held liable for any effects to the Salton Sea or its bordering
5 area resulting from the conservation measures.

6 (b) For the purposes of this section, and during the term of the
7 Quantification Settlement Agreement as defined in subdivision (a)
8 of Section 1 of the act amending this section during the 2001–02
9 Regular Session, “land fallowing conservation measures” means
10 the generation of water to be made available for transfer or for
11 environmental mitigation purposes by fallowing land or removing
12 land from agricultural production regardless of whether the
13 fallowing or removal from agricultural production is temporary or
14 long term, and regardless of whether it occurs in the course of
15 normal and customary agricultural production, if both of the
16 following apply:

17 (1) The measure is part of a land fallowing conservation plan
18 that includes mitigation provisions adopted by the Board of
19 Directors of the Imperial Irrigation District.

20 (2) Before the Imperial Irrigation District adopts a land
21 fallowing conservation plan, the district shall consult with the
22 Board of Supervisors of the County of Imperial and obtain the
23 board’s assessment of whether the proposed land fallowing
24 conservation plan includes adequate measures to avoid or mitigate
25 unreasonable economic or environmental impacts in the County of
26 Imperial.

27 (c) In order to minimize impacts on the environment, during
28 the term of the Quantification Settlement Agreement and for six
29 years thereafter, in any evaluation or assessment of the Imperial
30 Irrigation District’s use of water, it shall be conclusively presumed
31 that any water conserved, or used for mitigation purposes, through
32 land fallowing conservation measures has been conserved in the
33 same volume as if conserved by efficiency improvements, such as
34 by reducing canal seepage, canal spills, or surface or subsurface
35 runoff from irrigation fields.

36 (d) If a party to the Quantification Settlement Agreement
37 engages in water efficiency conservation measures or land
38 fallowing conservation measures to carry out a Quantification
39 Settlement Agreement transfer or to mitigate the environmental
40 impacts of a Quantification Settlement Agreement transfer, there

1 may be no forfeiture, diminution, or impairment of the right of that
2 party to use of the water conserved.

3 (e) During the period that the Quantification Settlement
4 Agreement is in effect and the Imperial Irrigation District is
5 meeting its water delivery obligations under the Quantification
6 Settlement Agreement and its water delivery obligations under
7 subdivision (c) of Section 2081.7 of the Fish and Game Code, no
8 person or local agency, as defined in Section 21062 of the Public
9 Resources Code, may seek to obtain additional conserved
10 Colorado River water from the district, voluntarily or
11 involuntarily, until the district has adopted a resolution offering to
12 make conserved Colorado River water available.

13 (f) During the initial term in which the Quantification
14 Settlement Agreement is in effect, any water transferred by the
15 Imperial Irrigation District shall be subject to an ecosystem
16 restoration fee established by the Department of Fish and Game,
17 in consultation with the board, to cover the proportional impacts
18 to the Salton Sea of the additional water transfer. The fee shall not
19 exceed 10 percent of the amount of any compensation received for
20 the transfer of the water. The fee shall be deposited in the Salton
21 Sea Restoration Fund. This fee shall not apply to the following
22 transfers:

23 (1) Transfers to meet water delivery obligations under the
24 Quantification Settlement Agreement and related agreements, as
25 defined in that agreement.

26 (2) Transfers to comply with subdivision (c) of Section 2081.7
27 of the Fish and Game Code.

28 (3) Transfers pursuant to a Defensive Transfer Agreement as
29 defined in the Agreement for Acquisition of Conserved Water
30 between the Imperial Irrigation District and the Metropolitan
31 Water District of Southern California.

32 (g) Subdivisions (c), (d), ~~and (e)~~ (e), and (f) shall not become
33 operative unless the parties have executed the Quantification
34 Settlement Agreement on or before October 12, 2003.

35 (h) This section may not be construed to exempt the Imperial
36 Irrigation District from any requirement established under the
37 California Environmental Quality Act (Division 13 (commencing
38 with Section 21000) of the Public Resources Code).

39 ~~SEC. 3. Section 1013.5 is added to the Water Code to read:~~

~~1013.5 The Coachella Valley Water District, Imperial
Irrigation District, and Metropolitan Water District of Southern
California may enter into Storage and Interstate Release
Agreements in accordance with Part 414 of Title 43 of the Code
of Federal Regulations. Nothing in this section shall be construed
to impair, affect, or diminish the rights of any water district under
an existing contract entered into under Section 5 of the Boulder
Canyon Project Act (43 U.S.C. Sec. 617d).~~

~~SEC. 4.~~

SEC. 3. This act shall only become operative if SB 277 and SB
654 of the 2003–04 Regular Session are both chaptered and
become effective on or before January 1, 2004.

